



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Colin A. Clark, Bureau of Land & Water Quality, Augusta

RE: Consent Agreement for Reg Bauer & Surveyworks, Inc.

DATE: September 3, 2009

Statute and Rule Reference: *The Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits soil disturbance in and adjacent to a significant wildlife habitat, namely Inland Waterfowl and Wading Bird Habitat, without first obtaining a permit from the Department.

Location: Leeds, Maine

Description: In the fall of 2007, staff inspected the property owned by Reg Bauer and determined that a portion of the Lowmoor Estates subdivision road and lots 2 through 5 had been constructed within, Inland Waterfowl and Wading Bird Habitat, which is a significant wildlife habitat without first obtaining a permit from the Department.

Environmental Issues: Removing vegetation, constructing permanent structures and placing of fill in significant wildlife habitat can result in the damage of sensitive bird habitat by interfering with feeding, nesting and breeding. Many bird species depend on the use of upland areas adjacent to the wetlands for a portion of their life cycle.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Surveyworks, Inc. pay a monetary penalty of \$3,550.00, which has been paid. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.

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IN THE MATTER OF:

REG BAUER)	ADMINISTRATIVE
LEEDS, ANDROSCOGGIN, MAINE)	
NRPA)	CONSENT
2007-226-L)	
)	AGREEMENT
AND)	
)	(38 M.R.S.A. § 347-A)
SURVEYWORKS, INC.)	
LEEDS, ANDROSCOGGIN, MAINE)	
NRPA)	
2007-226-L)	

This Agreement, by and among Reg Bauer, Surveyworks, Inc., the Maine Department of the Environmental Protection, and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Reg Bauer, 265 Leeds Junction Road, Wales, Maine, 04280, owns a parcel of land off Route 202 in Leeds, Maine as described and recorded in Book 5603 on Page 103 of the Androscoggin County Registry of Deeds.
2. Surveyworks, Inc. is a Maine corporation in good standing to conduct business in Maine with a mailing address of 528 River Road, Greene, Maine, 04236-4103 and which was hired by Reg Bauer to determine subdivision development potential and acquire local land use permits for the Lowmoor Estates subdivision project proposed to be built on the property referred to in Paragraph 1 of this Agreement. George A. Courbron, Jr. is the President of Surveyworks, Inc.
3. The property described in Paragraph 1 of this Agreement contains a portion of a significant wildlife habitat, namely Inland Waterfowl and Wading Bird Habitat, as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(10) and *Significant Wildlife Habitat* rules, 06-096 CMR 335(2) & (10)(A).
4. Department staff conducted an investigation of the property described in Paragraph 1 of this Agreement as follows:
 - A. On September 19, 2007, an inspection of the property revealed that part of the Lowmoor Estates subdivision road and lots 2 through 5 were constructed within a significant wildlife habitat which had been mapped as an Inland Waterfowl and Wading Bird Habitat. Approximately 2.86 acres of the habitat were impacted by the construction of

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IN THE MATTER OF:

REG BAUER ET AL.)	ADMINISTRATIVE
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the road and clearing of the lots. Neither Reg Bauer nor Surveyworks, Inc. first obtained a permit from the Department for these activities.

5. By removing or causing the removal of vegetation, filling or causing to be filled, displacing or causing to be displaced soil and other materials, and constructing or causing to be constructed a permanent structure in, on, or over a significant wildlife habitat, namely Inland Waterfowl and Wading Bird Habitat, without first obtaining a permit from the Department, Reg Bauer and Surveyworks, Inc. violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
6. On November 30, 2007, the Department issued a Notice of Violation to Reg Bauer regarding the violation described in Paragraphs 4 and 5 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
7. On August 11, 2008, the Department issued a Notice of Violation to Surveyworks, Inc. regarding the violation described in Paragraphs 4 and 5 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
8. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection ("Board"), which is part of the Department.
9. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
10. To resolve the violations referred to in Paragraphs 4 and 5 of this Agreement, Reg Bauer agrees to:
 - A. No later than January 31, 2009, submit an after-the-fact application for the activities described in Paragraph 4 of this Agreement within the Inland Waterfowl and Wading Bird Habitat.
 - a) If the after-the-fact application is approved by the Department, immediately comply with all terms and conditions of the after-the-fact permit; or
 - b) If the after-the-fact permit is wholly or in part denied, returned, withdrawn, or not submitted, within 30 days of denial, return, withdrawal, or the submission deadline, submit a restoration plan to the Department to remove all unapproved portions of the subdivision, including the road and lots, within the significant wildlife habitat and completely restore the significant wildlife habitat on the property described in Paragraph 1 of this Agreement to its original condition or as near thereto as practical. The restoration plan is subject to review and approval by Department staff and must

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include a specific time schedule for the completion of all phases of the restoration.
Implement the approved plan in accordance with the schedule contained therein.

- B. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this consent agreement.
- C Pay the Treasurer, State of Maine, in accordance with the following, the sum of three thousand five hundred fifty dollars (\$3,550.00) as a civil monetary penalty:
- i. Upon signing the Agreement pay the sum of one thousand one hundred eighty three dollars and thirty four cents (\$1183.34).
 - ii. No later than May 29th, 2009 pay the sum of one thousand one hundred eighty-three dollars and thirty-four cents (\$1183.33).
 - iii. No later than June 29th, 2009 pay the sum of one thousand one hundred eighty-three dollars and thirty-three cents (\$1183.33).
 - iv. If any payment is more than five (5) days late, the full outstanding balance of the unpaid penalty is immediately due and payable upon demand by the Department.
11. The Department and Office of the Attorney General grant a release of their causes of action against Reg Bauer and Surveyworks, Inc. for the specific violations listed in Paragraphs 4 and 5 of this Agreement on the express condition that all actions listed in Paragraph 10 of this Agreement, as applicable, are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages.

REG BAUER

 DATE: 5/6/09
REG BAUER, OWNER

SURVEYWORKS, INC.

BY:  DATE: 4/20/09
GEORGE A. COURBRON, JR., PRESIDENT

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2007-226-L)	(38 M.R.S.A. § 347-A)

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL